

Law Offices of

OLSON

HAGEL &

FISHBURN

LLP

February 13, 2009

VIA FACSIMILE 916-322-6440

Chairman Johnson and Commissioners
 Fair Political Practices Commission
 428 J Street, Suite 800
 Sacramento, CA 95814

RE: Comment on Proposed Regulation 18215.3 & Form 803

Dear Chairman Johnson and Commissioners:

I serve as special counsel to the Senate Rules Committee. Committee staff reviews all behested payment reports filed by each member of the Senate. Additionally, the Committee provides guidance to the Senators and their staff to ensure they are in compliance with the reporting requirements. The Committee has some comments and concerns about the currently proposed regulation and also requests some clarification be made on the proposed form and its instructions.

First, the memorandum and the draft regulation appear inconsistent as to who is responsible for posting the reports online. Subsection (d) of draft regulation 18215.3 states, "[w]ithin 30 days after the payments reach the threshold amount in subdivision (a), the elected officer must post the report or all of the information from the report, in a prominent place on the website of the agency to which he or she was elected..." Because there is no exception in the regulation for state officials, we read the regulation to impose upon each Senator responsibility for posting his or her behested payment information on the Senate's website. The draft instructions for Form 803 also state that officials should "only forward the Form 803 to the FPPC for posting if neither agency maintains a website."

However, the staff memorandum dated February 5, 2009 states, "[a]lso, to facilitate providing the information to the public, staff believes the forms should be made available online at the local level, and *state information made available on the Commission's website.*" (Emphasis added.) We interpret the staff memorandum to suggest that state elected officials do not need to post their report on their own website, but instead that duty would be performed by the FPPC. Given the inconsistency between the regulation and staff memorandum, it is unclear whether the Senate is responsible for posting the reports on its website or whether the Commission will post them.

555 Capitol Mall, Suite 1425 Sacramento, CA 95814-4602

Telephone: (916) 442-2952 Facsimile: (916) 442-1280 www.olsonhagel.com

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It is the Committee's position that the current system of having the FPPC post the behested payment reports is working quite well and that imposing the burden upon the Legislature is both a waste of staff resources and duplicative. If the Senate is responsible for posting its own reports, because it does not have staff or resources to create excel spreadsheets from the paper filed reports, it would likely only be able to post scanned copies of the reports on its website. This would contrast with the Commission's current practice of posting the information in a spreadsheet document which is can be easily compiled and subsequently searched by members of the public.

Secondly, the Committee recommends a few changes to draft Form 803. First, the blank in section I requires the filer to list an "Agency Contact." The Committee proposes changing this blank to read "Elected Officer Contact." The elected officer's contact would likely be the person with the most knowledge about the behested payment, and he or she could answer questions or requests for additional information made by Commission staff.

Additionally, the Committee suggests the boxes for "legislative," "governmental" and "charitable" be removed, leaving the description field for the elected official to detail the type of behested payment. This request is made for two reasons. First, neither the Political Reform Act nor the Commission's regulations define these terms, so it could lead to confusion as Senators attempt to determine which box is the appropriate one. Second, often the elected officer may believe the payment fulfills more than one of these purposes, but the form limits him or her to checking one box. Leaving only the blank for describing the purpose allows for more disclosure about the payment and does not cause confusion as to which box to check.¹

Thank you in advance for considering my comments. Please feel free to contact me with any questions.

Sincerely,

OLSON HAGEL & FISHBURN LLP



REBECCA J. OLSON

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¹ It should also be noted that neither example on the Form 803 instructions provide a description of the legislative, governmental or charitable purpose. Commission staff may want to revise the examples to include those descriptions if in fact a description is required.